

## **Remarks/Arguments**

This application has been carefully considered in light of the Non-Final Office action mailed August 6, 2008. As a result, minor amendments have been made to the claims to further distinguish the invention with respect to the prior art, it being emphasized that the claims as previously amended are believed to already defined an invention not suggested or disclosed by the prior art. Even in light of these amendments, no new matter has been added. It would be appreciated if the Examiner would indicate the acceptance of these amendments in the next Office communication.

### ***Allowable Claims***

The Examiner has indicated in the latest Office Action that claims 4, 14, 16 and 18 are directed to allowable subject matter and would be allowed if amended to include all the limitations of the base claim and any intervening claims.

### ***Claim Rejections - 35 USC § 103***

The Examiner is rejecting claims 1-3, 5, 11-13, 15, 17, 19 and 20 under 35 U.S.C. 103(a) as obvious over Bellamy, Jr. et al,

US Patent 3,904,059, hereinafter "Bellamy", when considered in view of the teachings of Hemple et al., US Patent 4,678,753, hereinafter "Hemple". For the reasons set for below, reconsideration of this rejection and favorable consideration and allowance of the claims is solicited.

Bellamy has been cited as disclosing a container 16 having a closure member that includes a sealing layer 24, stopper 12 and a flange 20 for sealing the container opening. The Examiner states that Bellamy does not disclose a sealing layer that is mounted in the closure, co-acting screw threads on the cap and container, nor a ring having at least one projection thereon for lifting a sealing disc from the container upon opening of the closure member relative to the container. In this respect, the Examiner states that it would be obvious for one of ordinary skill in the art to apply the teachings of Hempel to provide co-acting screw threads to the Bellamy closure as it would make the Bellamy closure easier to open and close and further provide at least one projection to remove the sealing layer, the resilient disc 24 of Bellamy, from the plug 12 thereof.

It is respectfully submitted that the proposed combination would not be obvious to one of ordinary skill in the art and would not be desirable based on the operative characteristics of

the Bellamy structure. Further, even if the combination was made as suggested, the resultant structure would not teach the elements of the present invention. With the present invention, an upper edge of a container which defines an opening to the container is engaged and sealed by a sealing disc 122 that is mounted within a skirt portion of a cap 125. A ring member 124 that is in threaded engagement with a screw thread 111 on the container is mounted within the cap, so as to be rotatable therewith, and includes at least one projection that is oriented toward an outer and underside portion of the sealing disc. The outer portion of the sealing disc is claimed as extending "radially outwardly from said opening edge of said neck." In this manner, when the cap is rotated to open the opening into the container, the at least one projection of the ring member will engage and lift up the outer portion of the sealing disc to thereby separate the sealing disc from the upper edge of the container and thereby open the opening into the container. As noted, the skirt 352 of the cap surrounds the ring, see page 5, the paragraph beginning at line 21 of the present application as filed.

In Bellamy, the upper edge of the container is not sealed by a sealing disc or structure that is mounted within a skirt portion of a closure cap but is rather sealed by an outer flange

20 of a plug 12. Further, it is intended that during use of the Bellamy structure, the plug is to remain seated within the opening into the container when the container is in use such that the flange 20 must remain in contact with the upper edge of the neck of the bottle. In view of the foregoing, there is no desire to remove a seal from the upper edge defining the opening in the container upon removal of a cap, as is the case in the present invention.

Further, in Bellamy, inner and outer caps 26 and 36 are provided with the inner cap being used to retain a resilient disc 24 over the top of the plug to close openings 14 and 16 in the plug. To access the inner cap, the outer cap is removed by allowing the outer cap to be severed along lines of weakness so that it is removed without moving the inner cap 26. After the outer cap is removed, an upper malleable disc 40 is removed and subsequently the resilient disc 24 is remove without moving the inner cap, see column 3, beginning at line 59 of the reference. This removing of the outer cap without wanting to move the inner cap teaches directly away from the structure of the present invention wherein the cap and ring member are connected to be movable together when the cap is being threaded relative to the screw thread of the container.

Also, in Bellamy, it is the double seal of members 24 and 40 that is important to increase sterility in the area of the closure above the plug 12. There is no suggestion nor teaching of any need to provide a structure for a cap that will lift a seal from engagement with an upper edge of a container that defines the primary opening into the container as the cap is removed, as is the case with the structure of the present invention.

In view of the foregoing, the structure of Bellamy is such that one of ordinary skill in the art would combine the elements of Hempel as suggested. Further, the structure of Hempel is also a stopper or plug-like closure wherein the upper edge 4 of the container is sealed by an outer flange of the stopper and not by a sealing disk mounter within a skirt of a cap, as is the structure of the present invention.

As pointed out in applicants' previous response, Hemple lacks a teaching of a closure having "a sealing disc mounted to said closure member," as required by at least independent claims 1 and 5. Hemple teaches that to use a blood culture flask 1, the stopper 7 is first placed in a neck 3 of the flask 1. The screw cap 9 is then screwed onto the neck 3 to hold the stopper and create a hermetic seal. Since the stopper 7 of the Hemple flask

1 is not attached to the screw cap 9, Hemple lacks a teaching of "a sealing disc mounted to said closure member."

In addition, the Hemple reference also lacks a teaching of a sealing disc "including a sealing layer for sealing said closure member to the opening edge of the neck when said closure member is mounted to the neck," as required by at least independent claims 1 and 5. The Hemple patent does not provide any motivation to add a sealing layer to the edge 8 of the stopper 7. To the contrary, the Hemple reference teaches away from adding a sealing layer to the edge 8. First, the stopper 7 is sealed to the neck 3 by contact of an outer radial surface of the stopper 7 against an inner radial surface of the neck 3. In light of the friction fit of the stopper 7 in the neck 3, there is no motivation to add a sealing layer to the resilient edge 8 of the stopper 7. Moreover, Hemple teaches that the screw cap 9 is screwed onto the neck 3 to force the resilient edge 8 of the stopper 7 into a gap 23 between the screw cap 9 and the neck 3. Since the edge 8 is forced into gap 23, as opposed to resting on the edges of the flask opening, the Hemple patent teaches away from adding a sealing layer to the edge 8 of the stopper 7. Since there is no motivation to add a sealing layer to the edge 8 of the stopper 7, the Hemple patent does not teach a disc having a sealing layer.

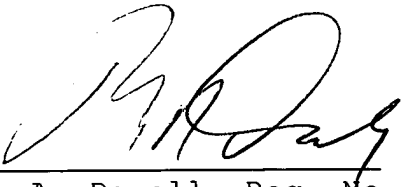
With specific reference to claims 19 and 20, It would not be obvious to combine any of the projections of Hempel to Bellamy as it is not desired in Bellamy to remove a sealing member as either the inner or outer caps are removed, thus the inclusion of such structures in Bellamy would be contrary to the operative characteristics of the Bellamy container and closure.

In view of the foregoing, reconsideration of the rejection under 35 U.S.C. 103(a) is respectfully requested and favorable consideration and allowance of the claims requested. Should the Examiner have any questions regarding this response, the amendments submitted herewith, or the allowability of the claims, it would be appreciated if the Examiner would contact the undersigned attorney of record at the telephone number provided below for purposes of facilitating prosecution of this application and for scheduling an interview, if necessary, before taking any action that may be considered as final.

As this response is being filed after the shortened statutory period, a separate request for extension of time is submitted herewith together with the required fee. Any deficiency in the fee may be charged to Deposit Account 04-1577.

Respectfully submitted,

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By   
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